

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIVED

MAY 25 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Payphone Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996

)
)
)
)
)
)

CC Docket No. 96-128
File No. NSD-L-99-34

DECLARATION OF PHILIP D. BRYDE

I, Philip D. Bryde, submit this declaration in support of the Request of Sprint Corporation for a Stay of the Second Order on Reconsideration and Revised Rules Pending Judicial Review ("New Rules").¹

1. I am a Program Manager for Sprint Communications Company, L.P. ("Sprint"), with responsibilities in the area of payphone compensation. Previously, I was a Senior Financial Analyst. I have been employed by Sprint for nearly 3 years and have had responsibilities in the area of payphone compensation for more than two years.

2. I have personal knowledge of Sprint's general relationships with payphone service providers ("PSPs") and facilities-based resellers ("FBRs"), as well as the systems that Sprint currently uses to monitor and compensate for coinless pay telephone calls that travel over Sprint's network. For purposes of this declaration, I have also consulted with various Sprint employees who (a) were involved in the development and implementation of Sprint's existing

¹ *Pay Telephone Reclassification And Compensation Provisions Of The Telecommunications Act of 1996; RBOC/GTE/SNET Payphone Coalition Petition for Clarification, Second Order on Reconsideration, 2001 FCC LEXIS 1917 (rel. Apr. 5, 2001) (FCC 01-109).*

No. of Copies rec'd 014
List A B C D E

compensation systems; (b) are involved in the ongoing administration of those systems; and/or (c) are familiar with Sprint's contractual, billing, and related practices with respect to PSPs and FBRs.

3. Approximately 108 million payphone calls pass through Sprint's network per quarter -- or 432 million per year. The calls are received from approximately 2.4 million payphones nationwide. Sprint transmits an estimated 26 million of these calls (or 104 million per year) to FBRs, who then switch and transmit the calls to end-users. The remainder of the calls are terminated directly by Sprint (either on its own behalf or on behalf of resellers that lack switching capabilities ("switchless resellers")). Sprint presently serves approximately 110 FBRs.

4. Under the FCC's current rules governing payphone compensation ("Original Rules"),² Sprint is responsible for compensating PSPs for calls that Sprint terminates, and the FBRs are responsible for compensating PSPs for the calls that the FBRs terminate. Sprint has direct payment relationships with at least 1,300 different PSPs or entities that act as collection agents for PSPs. The payment relationships between the FBRs and the PSPs are separate from and wholly independent of Sprint.

5. The New Rules require Sprint to develop and implement new systems to track and compensate PSPs not only for calls that are terminated by Sprint but also for calls that are terminated by FBRs. Whereas Sprint was only responsible for compensating PSPs for calls terminated by Sprint under the Original Rules, the New Rules will also require Sprint to pay a PSP for all compensable calls placed through a FBR. Sprint must then seek reimbursement from the FBR.

² *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21,233, 21,277 (¶ 92) (1996) (FCC 96-439).

The New Rules Significantly Change The Rights And Obligations Of Sprint, The PSPs, And The FBRs.

6. The Commission's stated policy is that the primary economic beneficiary of the call should track the call to completion and pay compensation for the completed call. Yet the New Rules impose these obligations on Sprint, even though it is not the primary economic beneficiary of the calls that it transfers to FBRs and even though the FBRs are most capable of accurately tracking the calls for compensation purposes.

7. The New Rules unfairly place Sprint in the role of a guarantor for PSPs. Because Sprint must first pay the PSP and then seek reimbursement from the FBR, Sprint bears the risk of non-payment by the FBR. The FCC has recognized that payphone compensation disputes are prevalent and that PSPs have been "frustrated" in their efforts to collect payments from FBRs.³ These disputes may result from insolvency or other inability to pay, deliberate non-payment, discrepancies over whether calls were "completed," or a myriad of other reasons. The New Rules simply transfer those problems onto the back of Sprint, without providing a definitive and workable mechanism to allow Sprint to obtain reimbursement for payments it has made when these types of disputes arise.

8. Roughly eight percent (8%) of the compensation due from switchless resellers per quarter has been uncollectable bad debt. Sprint handles roughly 26 million such calls per quarter from FBR's. Under the new rules, Sprint must now pay PSP compensation (at \$0.24 per call) for those calls and then seek reimbursement from the FBR. This means that Sprint would be made to guarantee payments of approximately \$6.4 million per quarter. If one assumes the same "bad debt" rate for FBRs as for switchless resellers, Sprint will bear the risk of at least \$500,000 per

³ Second Order on Reconsideration, 2001 FCC LEXIS 1917, at *11 (¶ 8).

quarter. These risks are likely to be significantly higher under the regime created by the New Rules, which will only compound compensation disputes between PSPs and FBRs with Sprint left holding the bag.

9. Sprint also has preexisting contractual arrangements with FBRs and tariffs that establish the terms by which Sprint is providing service for resale. These contracts and tariffs would have to be modified to reflect this new compensation scheme. The New Rules do not address how these contractual or tariff changes are to be accomplished within the six-month transition period or what remedies are available to Sprint in the event a FBR refuses to alter an existing contract that extends beyond the six-month period.

The New Rules Will Require Costly And Burdensome Changes To Sprint's Operations And Provide Insufficient Time For Implementation.

10. Sprint's current payphone compensation system was designed and developed to comply with the Original Rules. Sprint developed the compensation system in consultation with an outside entity during 1996 and 1997. It took approximately one year and over \$1 million to implement. It currently costs Sprint approximately \$165,000 per quarter to operate and maintain the system.

11. Numerous departments within Sprint are involved in the operation and maintenance of the current payphone compensation system. These departments must coordinate functions and share information in order to ensure efficient and accurate tracking of payphone calls terminated by Sprint. Dozens of Sprint employees are involved on a regular basis in these efforts.

12. As discussed below, the New Rules raise at least four serious developmental and operational issues for Sprint in the areas of (1) call completion tracking, (2) reporting, (3) monitoring of individual contractual arrangements and (4) reconstruction of old tracking data.

Moreover, Sprint's existing system is incapable of determining whether some calls are answered by an end user on another facilities-based carrier's network. Sprint will thus be forced to rely on third parties -- namely, the FBRs -- for information necessary to identify certain compensable calls. Because this information would be used to bill the FBRs, they may have little incentive to cooperate with Sprint and/or incentives to under-report completed calls. This would make any new system less efficient and less accurate in tracking compensable payphone calls, while putting Sprint in the middle of any compensation disputes between the PSPs and the FBRs. Sprint will also be required to increase full-time staff to administer the new system and/or to outsource some of the necessary functions to a third party. Additional Sprint staff will also be required to coordinate communications between the affected Sprint departments, to deal with the PSPs and the FBRs on information exchanges, billing questions and disputes, and to handle the reporting requirements imposed under the New Rules. Together, these new requirements and obligations will be burdensome to Sprint's operations and will significantly increase Sprint's costs.

13. Because Sprint is legally obligated to provide resale services to other facilities-based carriers, Sprint cannot opt to avoid these burdens and costs by declining to do business with FBRs.

14. The challenges Sprint will face in attempting to develop and implement the systems and arrangements required under the New Rules are greater than the challenges presented by the Original Rules. The Original Rules established a one year period for implementation. Yet, the New Rules inexplicably require full implementation of a new payphone compensation system and associated arrangements within six months, only half the time allowed under the Original Rules. It is unrealistic for the FCC to expect that all of these

complex requirements can be implemented within the truncated period allowed under the New Rules.

Call Completion Information

15. As noted, when a coinless pay telephone call is routed over Sprint's network, Sprint either switches and transmits the call to the terminating local exchange carrier ("LEC") or transmits the call to the platform of a FBR who, in turn, switches and transmits the call.

16. When Sprint transmits a call to the terminating LEC, Sprint has the capability to determine whether the call is answered by the called party (*i.e.*, "completed" for payphone compensation purposes).

17. When Sprint transmits a call to a FBR, rather than to the terminating LEC, Sprint is often unable to determine whether the call is answered by the called party -- and thus compensable to the PSP. For example, when a payphone call is made through a FBR using a calling card number, Sprint deems the call "complete" when the FBR's switch receives the call. However, a switched call is not considered "complete" for payphone compensation purposes unless it actually reaches -- and is "answered" by -- the called party. Sprint cannot track the routing of the call once it is delivered to the FBR's switch, does not have the present hardware systems capability to determine whether calls transmitted to the FBR are answered by the called party, and does not currently have access to such information from outside sources.

18. Because Sprint does not have the ability to determine whether all of the calls it transfers to FBRs are answered by the called party, Sprint cannot accurately identify which calls are compensable to the PSP. FBRs would have to provide Sprint with the necessary call completion data before Sprint could even begin developing a new payphone compensation system that comports with the requirements of the New Rules. For example, every call

transmitted over Sprint's network generates a call detail record ("CDR"). The CDR does not presently indicate whether calls transmitted to FBRs using a calling card number were ultimately answered by the called party. One theoretical solution would be to require the FBR to indicate on the CDR whether the call was completed to the called party.

19. Under Sprint's existing contractual arrangements, FBRs are not obligated to provide any call completion data to Sprint. Since this data would be used by Sprint to assess payphone compensation obligations against the FBRs, some of them may have no incentive to cooperate with Sprint in supplying the data and/or may under-report completed calls. At a minimum, Sprint would have to amend all of its existing contractual arrangements to include, among other things, a provision obligating the FBR to provide such data to Sprint. There would be no reliable or efficient way for Sprint to verify the accuracy of this data.

20. Assuming Sprint were able to modify its contracts to require the FBRs to identify on the CDR whether the call was answered by the called party, Sprint would have to incur additional development time for its computer systems to mark these CDRs with the appropriate indicator.

21. An additional obstacle to obtaining accurate and complete "call completion" information is that not every FBR has the capability of passing this information back to Sprint. For example, some FBRs pass calls on to other FBRs, thereby losing the ability to determine whether the call was answered by the called party and thus is compensable to the PSP. Call completion data would have to be provided back to Sprint through multiple parties, compounding both the administrative burdens and the potential for compensation delays and disputes.

22. Even if Sprint were able to obtain from each and every FBR accurate and timely call completion data, that information must be provided to Sprint in a uniform format. Otherwise, Sprint would be required to input such information manually into its payphone compensation system. Given the enormous volume of payphone calls that Sprint handles each day, it would be extremely burdensome and unreliable for Sprint to undertake this effort.

23. Assuming Sprint were able to obtain accurate and timely data in a uniform format, it would cost several millions of dollars and require thousands of hours of internal and external programming time for Sprint to develop a system to process that data and incorporate it into a new payphone compensation system that comports with the requirements of the New Rules.

24. Sprint has evaluated alternatives for determining the number of completed calls compensable to PSPs. For example, one option would be to treat all calling card numbers placed through a FBR as “complete” when Sprint transfers the call to the FBR’s switch. This approach would be less accurate, because not all of these calls would be truly completed. The PSPs would also receive compensation for unanswered calls, which are not compensable under the Telecommunications Act of 1996.

25. Another option would be to estimate “completed” calls based on some proxy. For example, although Sprint cannot determine whether a calling card call delivered to a FBR is answered by an end user, Sprint can determine the duration of the call. One could assume that calls over a certain duration were “answered.”

26. Alternatively, one could add up the number of calls delivered to a particular FBR per month and assume that a certain percentage of them were not answered. The calls could be grouped by originating payphone number, by PSP, or by FBR.

27. Any of these options would require agreements between the PSPs, Sprint, and the FBR, as to the appropriate methods to be used, as well as who would be responsible for tracking this information and mediating disputes. Sprint would also have to develop coding systems to identify and process the data, depending on the approach used. Constant interactions between the PSPs, Sprint, and the FBR would also be necessary to address billing disagreements and other issues.

Reporting Requirements

28. Under Sprint's current payphone compensation system, the PSP provides Sprint with a list of payphone numbers. Sprint then provides each PSP with the total number of calls from those payphones that were handled by Sprint per quarter. The FBRs are responsible for separately reporting their compensable calls to the PSPs.

29. The New Rules would require Sprint to "send back to each [PSP] . . . a statement in computer readable format indicating the toll-free and access code numbers that the LEC had delivered to the carrier, and the volume of calls for each toll-free and access number each carrier has received from each of the [PSP's] payphones."⁴ The New Rules provide no explanation or rationale for these requirements.

30. Breaking out the calls in such a manner requires complex coding, but is theoretically feasible. The more burdensome aspect of this new reporting requirement concerns the number of files to be sent and the manner of delivering those files to every PSP. Currently, Sprint pays compensation to at least 1,300 different PSPs or their collection agents. Many of the PSPs own thousands of payphones. The potential size of these detailed return files would be enormous. Implementation of these new reporting requirements will require a tremendous

⁴ Second Order on Reconsideration, 2001 FCC LEXIS 1917, at *32 (App. B).

amount of time during each billing cycle and will require additional staff for Sprint to sort through all these arrangements and prepare reports that convey the required information to each of the 1,300 or so PSPs.

31. The New Rules also require that the reports be provided in a “computer readable format.” In Sprint’s experience, PSPs vary widely in their technical capabilities. Some PSPs currently request paper, rather than electronic, reports.

Direct Contractual Arrangements Between PSPs and FBRs

32. Although the New Rules require the first facilities-based carrier in the call path to track to completion and pay compensation for coinless payphone calls, the rules also allow for FBRs and PSPs to enter into “direct contractual arrangements” with each other for the payment of compensation. Allowing for these alternative “direct contractual arrangements” creates significant complications for Sprint. The New Rules provide no requirements or guidelines on how Sprint is supposed to know about and account for these “direct arrangements” when tracking compensable calls.

33. It is highly unlikely that a FBR would enter into such “direct arrangements” with all of the 1,300 PSPs and collection agents with whom Sprint has direct payment relationships. Based on data for the most recent period for which compensation has been paid, 396 checks issued by Sprint -- roughly 30% of the total -- were for less than \$50.00. Since Sprint’s own volume of compensable calls far exceeds that of any of the FBRs that use Sprint’s network, it is likely that the transaction costs of establishing such direct relationships are too great, for both the smaller PSPs and smaller FBRs, to make such direct relationships mutually beneficial. But unless a particular FBR were to establish direct relationships with all PSPs, Sprint would have to keep track of when arrangements between individual FBRs and PSPs are established, in order to

avoid double payment of calls by Sprint and the FBR. The problems inherent in this approach will surely lead to numerous discrepancies and billing disputes among the various parties.

34. Even if Sprint were given timely and accurate notice of these “direct arrangements,” they present potentially insurmountable problems from a computer-programming standpoint. Such arrangements could change almost daily, given the number of PSPs and FBRs involved. Modifying Sprint’s systems to account for direct arrangements between a PSP and a FBR would be very difficult if not infeasible. The system would have to be able to recognize that a call made from a particular payphone to a particular access number on certain days is eligible for compensation, while that same call made on other days is not. A database would have to contain the combination of every payphone number and every access number currently involved in a “direct arrangement” so that Sprint could identify which calls it is responsible for paying the PSP and which calls it is not. Dates would have to be applied to these combinations to indicate when each “direct arrangement” began and ended. It would take thousands of hours of programming to attempt to develop such functionalities at even the most basic level.

35. Moreover, payphone ownership may change as the facilities are sold or leased to new parties. FBRs make arrangements with the PSP, not with the payphone. If a payphone is sold to another PSP, existing arrangements for that payphone will be terminated and the FBR will negotiate new arrangements with the new PSP. The FBR would have to contact Sprint each time it makes, modifies, or ends the arrangement with any PSP. Sprint would be totally dependent upon the FBR to provide Sprint with accurate, up-to-date information on these changes. Sprint would have no independent way to monitor or verify these arrangements.

36. Because there are so many FBRs with such a wide variety of technical capabilities, it is not practical to create a standard automated process to log PSP/FBR

agreements. Instead, notification would most likely come from a variety of media, such as file transmissions, facsimiles, telephone calls and other forms of correspondence. Additional full-time staff would be required just to maintain Sprint's internal files on these "direct arrangements" on a daily basis.

37. Sprint would also have to be provided with a list of all calls not processed for payment to the PSP because of a "direct arrangement." A process to access and display these calls would have to be developed in order to address inquiries or questions concerning these calls.

38. If there are any flaws in the process Sprint develops to track these "direct arrangements," or any miscommunication between parties, Sprint would again be placed in an untenable situation. On the one hand, the PSP would argue that Sprint should be liable for compensating the call, while Sprint, on the other hand, would be telling the PSP to contact the FBR with whom it has a direct arrangement. Alternatively, Sprint would pay the PSP for the call and the FBR would refuse to compensate Sprint, claiming it already paid the PSP.

Examination of Old Tracking Data

39. As noted in paragraphs 15-19 above, Sprint does not possess call tracking or call completion data for all calls passed on to FBRs. Sprint thus has no way to determine whether such calls made in the past were answered by the called party and were thus compensable to a PSP. Sprint would be dependent upon each FBR to provide such historical data, and this would be practically impossible in many cases. Certain FBRs are likely to resist providing the information to Sprint because they do not have a contractual obligation -- and no economic incentive -- to do so. Moreover, Sprint cannot know whether FBRs maintain accurate historical records of the calls. In addition, many FBRs have gone out of business, were acquired by other

entities, or have switched to other facilities-based providers and have no reason to cooperate with Sprint or a PSP.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, reading "Phil Bryle", is written over a horizontal line.

Executed on May 23, 2001